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9 **UNITED STATES BANKRUPTCY COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN JOSE DIVISION**

12 In re:	) Chapter 11
	)
13	) Cases Jointly Administered
	)
14 <b>COMMUNITY TOWERS I, LLC,</b>	) Case No. 11-58944-SLJ-11
A Delaware Limited Liability Company,	)
15 Employer Tax I.D. No. 75-2456729,	)
	)
16 <b>COMMUNITY TOWERS II, LLC,</b>	) Case No. 11-58945-SLJ-11
A Delaware Limited Liability Company,	)
17 Employer Tax I.D. No. 75-2560662,	)
	)
18 <b>COMMUNITY TOWERS III, LLC,</b>	) Case No. 11-58948-SLJ-11
A Delaware Limited Liability Company,	)
19 Employer Tax I.D. No. 32-0065635,	)
	)
20 <b>COMMUNITY TOWERS IV, LLC,</b>	) Case No. 11-58949-SLJ-11
A Delaware Limited Liability Company,	)
21 Employer Tax I.D. No. 77-0379075,	)
	)
22 Debtor(s).	) <b><u>Hearing on Plan Confirmation</u></b>
	)
23 111 W. Saint John Street, Suite 705	) Date: May 31, 2012
San Jose, California 95113	) Time: 1:30 p.m.
	) Place: United States Bankruptcy Court
24	) 280 S. First St., Room 3099
	) San Jose, CA 95113
25	) Judge: Honorable Stephen L. Johnson
26	)

27 **DEBTORS' JOINT PLAN OF REORGANIZATION**  
28 **(DATED MARCH 27, 2012)**

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**TABLE OF EXHIBITS**

<b>EXHIBIT A</b>	<b>LOAN DOCUMENTS MODIFICATION</b>
<b>EXHIBIT B</b>	<b>LIST OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED PURSUANT TO PLAN</b>

1 **PRELIMINARY STATEMENT**

2 Community Towers I, LLC, Community Towers II, LLC, Community Towers III, LLC, and  
3 Community Towers IV, LLC (the “**Debtors**”) propose their DEBTORS’ JOINT PLAN OF  
4 REORGANIZATION (DATED MARCH 27, 2011) (the “**Plan**”) pursuant to the provisions of Chapter 11  
5 of the Bankruptcy Code.

6 On September 26, 2011, the Debtors each filed a Voluntary Petition under Chapter 11 of the  
7 Bankruptcy Code. On September 27, 2011, the Court entered its ORDER AUTHORIZING AND  
8 DIRECTING JOINT ADMINISTRATION OF ESTATES.

9 Chapter 11 sets forth the rules and procedures under which financially distressed entities may  
10 be reorganized or liquidated pursuant to a plan presented to Creditors and Interest Holders for  
11 consideration and approval. Confirmation (approval) of the Plan is the culmination of that process.

12 This Plan sets forth the Debtors’ proposal for the reorganization of the Debtors and the  
13 treatment of all Allowed Claims against the Debtors. With the Plan, Creditors and Interest Holders  
14 will receive the DISCLOSURE STATEMENT FOR DEBTORS’ JOINT PLAN OF REORGANIZATION (DATED  
15 MARCH 27, 2012) (the “**Disclosure Statement**”). With the Plan and Disclosure Statement, Creditors  
16 will receive a Ballot for voting on the Plan. Class 1 Creditors, Class 3 Creditors, Class 4 Creditors  
17 and Class 8 Interests are not impaired under the Plan and are therefore conclusively presumed to  
18 have accepted the Plan. Accordingly, acceptances with respect to these classes are not being  
19 solicited and no Ballots need be returned by members of these classes. Acceptances of the Plan are  
20 therefore being solicited only from members of Classes 2, 5, 6 and 7. Consequently, only holders of  
21 Classes 2, 5, 6 and 7 claims need return their Ballots.

22 The Disclosure Statement includes a summary of the Debtors’ history, a summary of  
23 significant events during the Chapter 11 cases, a summary of the Debtors’ assets and liabilities, a  
24 summary of what Creditors and Interest Holders will receive under the Plan, a discussion of certain  
25 alternatives to the Plan, and a summary of the procedures and voting requirements necessary for  
26 Confirmation of the Plan.

27 You should thoroughly review both the Plan and the Disclosure Statement before deciding  
28 whether you will accept or reject the Plan.

1 CREDITORS AND INTEREST HOLDERS WISHING TO VOTE ON THE PLAN  
2 SHOULD COMPLETE THE BALLOT PROVIDED AND RETURN IT NO LATER THAN **MAY**  
3 **21, 2012 AT 5:00 P.M. PACIFIC DAYLIGHT TIME TO:**

4 **Murray & Murray**  
5 **A Professional Corporation**  
6 **Attn: Rachel Ragni Larrenaga**  
7 **19400 Stevens Creek Boulevard, Suite 200**  
8 **Cupertino, California 95014-2548**

9 IF YOUR BALLOT IS NOT RETURNED BY MAY 21, 2012 AT 5:00 P.M. PACIFIC  
10 DAYLIGHT TIME, IT MAY NOT BE CONSIDERED. BALLOTS WHICH ARE RETURNED  
11 BUT NOT PROPERLY EXECUTED WILL NOT BE CONSIDERED. BALLOTS WHICH ARE  
12 EXECUTED BUT WHICH FAIL TO INDICATE EITHER ACCEPTANCE OR REJECTION OF  
13 THE PLAN WILL BE CONSIDERED AS ACCEPTING THE PLAN.

14 If any class of Claims does not accept the Plan, the Debtors may elect to seek Confirmation  
15 of the Plan under Section 1129 (b) of the Bankruptcy Code. Confirmation under Section 1129 (b)  
16 can, in appropriate circumstances, take place notwithstanding the rejection of, or objection to, the  
17 Plan by Creditors and Interest Holders. If required, as permitted by the terms of the Plan, the Plan  
18 may be modified at or prior to the hearing on Confirmation to permit Bankruptcy Court approval  
19 under Section 1129 (b). If the Plan is not confirmed, the Bankruptcy Court may order the  
20 Bankruptcy Cases dismissed, or converted to cases under Chapter 7 of the Bankruptcy Code, or the  
21 Debtors or other parties in interest may propose a different plan.

## 22 **ARTICLE I.**

### 23 **DEFINITIONS**

24 As used in the Plan, the following terms will have the respective meanings specified below:

25 **1.1 “Administrative Claim”** means a Claim for any cost or expense of administration of  
26 a kind specified in Section 503(b) of the Bankruptcy Code, including any actual and necessary costs  
27 and expenses of preserving the Bankruptcy Estates incurred on or after the Petition Date and through  
28 and including the Confirmation Date, any cure amounts that must be paid in connection with the  
assumption of any executory contract or unexpired lease of the Debtors under Section 365 of the  
Bankruptcy Code, fees due to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), and

1 compensation for legal or other services and reimbursement of expenses allowed by the Bankruptcy  
2 Court under Sections 330 and 331 of the Bankruptcy Code or otherwise.

3 **1.2 “Administrative Claims Bar Date”** means that date which is thirty (30) days  
4 following the date of the Notice of Confirmation.

5 **1.3 “Administrative Claim Objection Deadline”** means sixty (60) days after the  
6 Administrative Claims Bar Date or such later date as may be established by the Bankruptcy Court  
7 for cause.

8 **1.4 “Allowed” or “Allowed Amount”** means the amount in which any Claim or Interest  
9 is allowed. Unless otherwise expressly required by the Bankruptcy Code or the Plan, the Allowed  
10 Amount of any Claim does not include interest on such Claim from or after the Petition Date.

11 **1.5 “Allowed Administrative Claim”** means all or any portion of an Administrative  
12 Claim that has either been Allowed by a Final Order or to which there has been no objection within  
13 the time period established by the Plan or by an order of the Bankruptcy Court.

14 **1.6 “Allowed Claim”** means a Claim: (a) in respect to which a proof of Claim has been  
15 filed with the Bankruptcy Court by the applicable Claims Bar Date and to which no objection has  
16 been filed within the time fixed by the Plan or the Bankruptcy Court; (b) as to which no proof of  
17 Claim has been filed and which has been listed on Schedule D, E or F of the Debtors’ Schedules and  
18 is not listed as disputed, contingent, unliquidated or unknown as to amount, and to which no  
19 objection has been filed within the time fixed by the Plan or the Bankruptcy Court; or (c) which is  
20 Allowed by a Final Order. No Claim will be considered an Allowed Claim if: (1) an objection to the  
21 allowance thereof is interposed by a party in interest within the time fixed by the Plan or the  
22 Bankruptcy Court, and such objection has not been overruled by a Final Order; or (2) the Claim has  
23 been satisfied.

24 **1.7 “Avoidance Actions”** means causes of action under Chapter 5 of the Bankruptcy  
25 Code.

26 **1.8 “Ballot”** means the voting ballot Creditors will receive for purposes of voting on the  
27 Plan.

28 **1.9 “Bankruptcy Cases” or “Cases”** means the bankruptcy cases commenced by the



1 Debtors' filing with the Bankruptcy Court of their Voluntary Petitions under Chapter 11 of the  
2 Bankruptcy Code.

3 **1.10 "Bankruptcy Code"** means title 11, United States Code, § 101, et seq., as in effect  
4 and applicable to the Cases.

5 **1.11 "Bankruptcy Court"** means the United States Bankruptcy Court for the Northern  
6 District of California, San Jose Division, or such other court exercising jurisdiction over the Cases.

7 **1.12 "Bankruptcy Estates" or "Estates"** means the estates created by the commencement  
8 of the Bankruptcy Cases and comprised of the property described in Section 541 of the Bankruptcy  
9 Code.

10 **1.13 "Bankruptcy Rules"** means the Federal Rules of Bankruptcy Procedure promulgated  
11 under 28 U.S.C. § 2075, as amended, as applicable to the Bankruptcy Cases.

12 **1.14 "Business Day"** means a day, Monday through Friday, excluding Legal Holidays.

13 **1.15 "CIBC"** means CIBC, Inc. a Delaware corporation.

14 **1.16 "CIBC Action"** means the action commenced or to be commenced by the Debtors  
15 against CIBC as further described herein.

16 **1.17 "Claim"** means any: (a) right to payment, whether or not such right is reduced to  
17 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed,  
18 legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance  
19 if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is  
20 reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or  
21 unsecured.

22 **1.18 "Claims Bar Date"** means: (a) with respect to Claims other than those held by non-  
23 governmental units, January 24, 2012; (b) with respect to Claims held by governmental units, March  
24 26, 2012; (c) with respect to Rejection Claims, the Rejection Claims Bar Date; and (d) with respect to  
25 an Administrative Claim, other than as provided in Section 4.1 below for the Claims of the Debtors'  
26 Professionals, the Administrative Claims Bar Date.

27 **1.19 "Claims Objection Date"** means the date ninety (90) days after the Effective Date;  
28 provided, however, that the Claims Objection Date may be extended by the Bankruptcy Court for

1 cause upon the *ex parte* motion of the Reorganized Debtors.

2       **1.20 “Confirmation”** means the entry by the Bankruptcy Court of the Order of  
3 Confirmation.

4       **1.21 “Confirmation Date”** means the date on which the Bankruptcy Court enters the  
5 Order of Confirmation.

6       **1.22 “Confirmation Hearing”** means the hearing held by the Bankruptcy Court to  
7 consider Confirmation of the Plan as required by Section 1128(a) of the Bankruptcy Code.

8       **1.23 “Creditor”** means any entity holding a Claim against the Debtors.

9       **1.24 “Debtors”** means Community Towers I, LLC, Community Towers II, LLC,  
10 Community Towers III, LLC, and Community Towers IV, LLC, all Delaware limited liability  
11 companies.

12       **1.25 “Debtors’ Professionals”** means, collectively, Murray & Murray, A Professional  
13 Corporation; Law Offices of Eric Mogensen; and Gattey Law Office; and/or their successors, if any;  
14 and such other professionals whose employment by the Debtors prior to the Confirmation Date is  
15 approved by order of the Bankruptcy Court, if any; and following the Effective Date, any  
16 professionals engaged by the Reorganized Debtors to represent or assist it in fulfilling its duties and  
17 obligations as the Reorganized Debtors under the Plan, including such accountant(s) as the  
18 Reorganized Debtors may select to complete the Reorganized Debtors’ tax returns and other  
19 required filings with governmental authorities having jurisdiction over the Reorganized Debtors, and  
20 such legal professionals as might be appropriate to assist in administering the Plan, the Bankruptcy  
21 Cases and the Bankruptcy Estates.

22       **1.26 “Disbursing Agent”** means John L. Feece, provided that the Debtors, the  
23 Reorganized Debtors or John L. Feece may request that the Bankruptcy Court designate another  
24 Person to serve as Disbursing Agent.

25       **1.27 “Disclosure Statement”** means the DISCLOSURE STATEMENT FOR DEBTORS’ JOINT  
26 PLAN OF REORGANIZATION (DATED MARCH 27, 2012), including any modification(s) thereof and/or  
27 amendment(s) thereto.

28       **1.28 “Disputed Claim”** means a Claim against the Debtors: (a) as to which a proof of

1 Claim has not been filed and/or that has been listed in the Debtors' Schedules as disputed,  
2 contingent, unliquidated or unknown as to amount; (b) as to which an objection has been filed  
3 within the time fixed by the Bankruptcy Court and which objection has not been withdrawn or  
4 disposed of by a Final Order; or (c) by a Person who is a defendant in an adversary proceeding  
5 (including an Avoidance Action) which has not been withdrawn or disposed of by a Final Order.

6 **1.29 "Disputed Claims Reserve Account"** means a segregated interest-bearing bank  
7 account maintained for the purpose of holding cash attributable to Disputed Claims and administered  
8 consistent with the provisions of Section 345 of the Bankruptcy Code.

9 **1.30 "Distribution"** means, as the context requires: (a) the cash to be provided under the  
10 Plan to the holders of Allowed Claims; or (b) the payment, transfer, delivery or deposit of cash to  
11 Creditors pursuant to the Plan.

12 **1.31 "Distribution Date"** means any date on which a Distribution is made pursuant to the  
13 Plan.

14 **1.32 "Effective Date"** means the effective date of the Plan, which will be a date  
15 designated by the Debtors at or before the Confirmation Hearing, but which date will be no less than  
16 15 calendar days and no more than 60 calendar days following the Confirmation Date, or, in the  
17 event that the Effective Date of the Plan is enjoined or stayed by a court of competent jurisdiction for  
18 any period of time, no later than 30 calendar days following expiration of such stay or injunction;  
19 *provided* that such date may be extended up to an additional 30 calendar days beyond the period set  
20 forth above by the Reorganized Debtors, in their sole discretion.

21 **1.33 "Final Order"** means an order entered on the docket by the Bankruptcy Court or  
22 such other court exercising jurisdiction over the case, as applicable, which is no longer subject to  
23 appeal, certiorari or other proceedings for review or rehearing, and as to which no appeal, certiorari  
24 or other proceedings for review or rehearing are pending.

25 **1.34 "General Unsecured Claims"** means any and all general unsecured claims incurred  
26 by the Debtors prior to the Petition Date, including Rejection Claims, but not including  
27 Administrative Claims, Priority Claims, or Tax Claims.

28 **1.35 "Interest"** means a share in the Debtors, whether or not transferable or denominated

1 as “stock” or similar security.

2       **1.36 “Interest Holder”** means the holder of an Interest in the Debtors.

3       **1.37 “Lease Agreement” or “Lease Agreements”** means the lease agreement each  
4 Tenant has with the Debtors for the lease or rent of a space or unit in the Subject Property.

5       **1.38 “Lease Deposit Claims”** means a claim for a lease deposit made by a Tenant for the  
6 lease or rent of a space or unit in the Subject Property.

7       **1.39 “Legal Rate”** means per annum interest at the federal judgment rate.

8       **1.40 “Loan Documents Modification”** means **Exhibit “A”** to the Plan.

9       **1.41 “Local Rules”** means the Local Rules of the United States District Court for the  
10 Northern District of California, as amended, as applicable to these Bankruptcy Cases.

11       **1.42 “Member”** means any member of an Interest Holder of the Debtors.

12       **1.43 “Notice of Confirmation”** means the NOTICE OF ORDER CONFIRMING PLAN or  
13 similarly titled notice of like effect issued by the Clerk of the Bankruptcy Court following  
14 Confirmation.

15       **1.44 “Notice Parties”** means the Reorganized Debtors, the United States Trustee, the  
16 Responsible Person, and any Creditor or party in interest who, after the Confirmation Hearing,  
17 serves a notice on the Debtors or Reorganized Debtors and their counsel requesting to be added as a  
18 notice party; provided, however, that any Creditor whose Claim has been paid in full will no longer  
19 be a Notice Party.

20       **1.45 “Order of Confirmation”** means the order entered by the Bankruptcy Court  
21 approving and confirming the Plan in accordance with the provisions of Chapter 11 of the  
22 Bankruptcy Code.

23       **1.46 “Petition Date”** means September 26, 2011, the date on which the Debtors each filed  
24 their individual Voluntary Petitions under Chapter 11 initiating the Bankruptcy Cases and on which  
25 date relief was ordered in the Bankruptcy Cases.

26       **1.47 “Plan”** means this DEBTORS’ JOINT PLAN OF REORGANIZATION (DATED MARCH 27,  
27 2012), including any modification(s) hereof and/or amendment(s) hereto that comply with Section  
28 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

1           **1.48 “Pre-Paid Rent Claim”** means any Allowed Claim by a Tenant for the prepayment  
2 of rent to lease or rent a space or unit in the Subject Property.

3           **1.49 “Prime Rate”** means the prime rate quoted by Bank of America, N.A.

4           **1.50 “Priority Claim”** means any Allowed Claim entitled to priority pursuant to Section  
5 507(a) of the Bankruptcy Code, but not including an Administrative Claim or a Tax Claim.

6           **1.51 “Rejection Claims”** means an Allowed General Unsecured Claim arising from the  
7 Debtors’ rejection of an unexpired lease or executory contract pursuant to the Plan or pursuant to an  
8 order of the Bankruptcy Court.

9           **1.52 “Rejection Claims Bar Date”** means the earlier of: (a) thirty (30) days following the  
10 date of the Notice of Confirmation; or (b) thirty (30) days after the effective rejection date with  
11 respect to an executory contract or unexpired lease rejected before the Confirmation Date pursuant to  
12 a Final Order.

13           **1.53 “Reorganized Debtors”** means the Debtors on and after the Effective Date.

14           **1.54 “Responsible Person”** means John L. Feece or such other Person designated by an  
15 order of the Bankruptcy Court.

16           **1.55 “Retained Claims”** means any Claim owned or held by the Debtors against any  
17 Person as of the Effective Date, including without limitation, Avoidance Actions, and those Retained  
18 Claims referred to in Article X.

19           **1.56 “Schedules”** means the Debtors’ schedules of assets and liabilities consisting of  
20 Schedules “A” through “H” filed with the Bankruptcy Court pursuant to Section 521(a)(1) of the  
21 Bankruptcy Code and Bankruptcy Rule 1007(b), as may be amended at any time prior to  
22 Distribution.

23           **1.57 “Subject Property”** means the two building, 305,000 square foot office complex  
24 located at 111 West Saint John Street and 111 North Market Street, San Jose, California.

25           **1.58 “Tax Claim”** means any Allowed Claim against the Debtors entitled to priority  
26 pursuant to Section 507(a)(8) of the Bankruptcy Code.

27           **1.59 “Tenant”** means a Person who rents or leases a space or unit in the Subject Property  
28 from the Debtors.

1 A capitalized term used in the Plan that is not herein defined but is defined in the Bankruptcy  
2 Code or the Bankruptcy Rules will have the meaning ascribed to such term in the Bankruptcy Code  
3 or the Bankruptcy Rules.

## 4 **ARTICLE II.**

### 5 **DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS**

6 The Allowed Claims against and Interests in the Debtors are designated and classified below  
7 for purposes of the Plan. Except to the extent that the Plan provides otherwise, a Claim or Interest  
8 that is properly includable in more than one class is classified in a particular class only to the extent  
9 that it qualifies within the description of that class, and is placed in a different class to the extent it  
10 qualifies within the description of such different class.

#### 11 **2.1 Class 1 (Allowed Secured Claim of the Santa Clara County Tax Collector).**

12 Class 1 consists of the Allowed Secured Claim of the Santa Clara County Tax Collector  
13 arising on or before the Effective Date of the Plan.

#### 14 **2.2 Class 2 (Allowed CIBC Claim).**

15 Class 2 consists of the Allowed Secured Claim of CIBC.

#### 16 **2.3 Class 3 (Allowed Priority Claims).**

17 Class 3 consists of Allowed Priority Claims, if any.

#### 18 **2.4 Class 4 (Pre-Paid Rent Claims).**

19 Class 4 consists of Allowed Pre-Paid Rent Claims.

#### 20 **2.5 Class 5 (Lease Deposit Claims).**

21 Class 5 consists of Allowed Lease Deposit Claims.

#### 22 **2.6 Class 6 (General Unsecured Claims).**

23 Class 6 consists of Allowed General Unsecured Claims not included in Class 7.

#### 24 **2.7 Class 7 (General Unsecured Claims of John and Rosalie Feece).**

25 Class 7 consists of the Allowed General Unsecured Claims of John and Rosalie Feece.

#### 26 **2.8 Class 8 (Interests).**

27 Class 8 consists of the Allowed Interests.

28 ///

1 **ARTICLE III.**

2 **TREATMENT OF CLAIMS AND INTERESTS NOT IMPAIRED UNDER THE PLAN**

3 The below classes of Claims and Interests are not impaired under the Plan and will receive  
4 the treatment described below:

5 **3.1 Class 1 (Allowed Secured Claim of the Santa Clara County Tax Collector).**

6 Class 1 consists of the Allowed Secured Claim of the Santa Clara County Tax Collector for  
7 real property taxes arising on or before the Effective Date and secured by the Subject Property. The  
8 Allowed Secured Claim of the Santa Clara County Tax Collector arising on or before the Effective  
9 Date will be paid in full when due. Pursuant to Section 1129(b)(2)(A)(i), the Santa Clara County  
10 Tax Collector shall retain its liens securing its Claim(s) on the Subject Property, to the extent not  
11 avoidable and to the extent of the Allowed amount of such Claim(s).

12 The holder of the Class 1 Claim is unimpaired under the Plan and is presumed to have  
13 accepted the Plan. Claims are subject to verification and may be reduced after objections are  
14 resolved by the Bankruptcy Court. The foregoing is in full and final satisfaction of the Class 1  
15 Claim.

16 **3.2 Class 3 (Priority Claims).**

17 Class 3 consists of all Claims entitled to priority under Bankruptcy Code Section 507(a) other  
18 than unclassified Section 503(b) Administrative Claims and Section 507(a)(8) Tax Claims described  
19 herein. A preliminary review of the Debtors' books and records indicates that there are no Class 3  
20 Priority Claims. There are no filed Class 3 Claims and the Debtors estimate that on the Effective  
21 Date, there will be no Allowed Class 3 Claims. Except to the extent that the holder of a particular  
22 Allowed Class 3 Claim, if any, has agreed to a less favorable treatment of such Claim, each holder of  
23 an Allowed Class 3 Claim shall be paid in cash, in full upon the later of: (a) the Effective Date; or  
24 (b) if such Claim is initially a Disputed Claim, when it becomes an Allowed Claim. The foregoing is  
25 in full and final satisfaction of all Class 3 Claims.

26 The holders of Class 3 Claims, if any, are unimpaired under the Plan and are presumed to  
27 have accepted the Plan. Claims are subject to verification and may be reduced after objections are  
28 resolved by the Bankruptcy Court. The foregoing is in full and final satisfaction of Class 3 Claims.



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1 Professionals) must be filed no later than the Administrative Claim Objection Deadline. If no  
2 objection to the applicable Administrative Claim is filed on or before that date, such Administrative  
3 Claim will be deemed Allowed as of that date. The foregoing is in full and final satisfaction of all  
4 Administrative Claims.

#### 5 **4.2 Tax Claims Entitled to Priority under Section 507(a)(8).**

6 Except to the extent that the holder of a particular Tax Claim has agreed to a different  
7 treatment of such Claim, each holder of an Allowed Tax Claim will be paid in cash, in full upon the  
8 later of: (a) the Effective Date; and (b) if such Claim is initially a Disputed Claim, when such Claim  
9 becomes an Allowed Tax Claim; provided, however, that no such payment will be made unless and  
10 until the holders of Allowed Claims entitled to priority pursuant to Section 507(a)(2) through (a)(7)  
11 of the Bankruptcy Code are paid or otherwise receive the treatment accorded to them in the Plan;  
12 and, provided further, that any such Tax Claim will be paid no later than five (5) years from the  
13 Petition Date with interest as provided by applicable nonbankruptcy law.

### 14 **ARTICLE V.**

#### 15 **TREATMENT OF CLASSES OF** 16 **CLAIMS AND INTERESTS THAT ARE IMPAIRED UNDER THE PLAN**

#### 17 **5.1 Class 2 (Allowed CIBC Claim).**

18 Class 2 consists of the Allowed Secured Claim of CIBC.

19 Pursuant to section 1129(b)(2)(A)(i), CIBC shall retain all liens, security interests and other  
20 encumbrances affecting property of the Debtors and the Reorganized Debtors granted in favor of  
21 CIBC prior to the Effective Date to the extent of the Allowed Secured Claim of CIBC. The principal  
22 amount plus the allowed accrued interest of the Allowed Secured Claim of CIBC will be paid over  
23 ten (10) years from the Effective Date together with interest at the Prime Rate or such other rate as  
24 may be determined by the Court, adjusted annually and subject to a three and one quarter percent (3  
25 1/4%) floor, as follows: (i) for the first five (5) years following the Effective Date, CIBC will receive  
26 monthly payments of interest only, commencing on the first day of the first calendar month  
27 following the Effective Date, and (ii) for years 6 through 10 following the Effective Date, CIBC will  
28 receive monthly payments of principal and interest based on a thirty (30) year amortization schedule.

1 CIBC's Allowed Secured Claim may be paid in full at any time without penalty, and will be paid in  
2 all events no later than ten (10) years following the Effective Date. The Subject Property may be  
3 transferred subject to the Allowed Secured Claim of CIBC. The foregoing is in full and final  
4 satisfaction of all Class 2 Claims.

5 The holder of the Class 2 Claim is impaired. All Claims are subject to verification and are  
6 likely to be reduced following resolution of Disputed Claims, including mitigation and offset as  
7 applicable.

#### 8 **5.2 Class 5 (Lease Deposit Claims).**

9 Class 5 consists of all Allowed Lease Deposit Claims. On the Effective Date each holder of  
10 an Allowed Class 5 Claim will receive a credit in an amount equal to its Allowed Claim to use in the  
11 normal course of business and pursuant to the terms of the Tenant's Lease Agreement; provided,  
12 however, that if any holder of a Class 5 Claim is entitled, pursuant to the terms of its Lease  
13 Agreement, to a refund of any deposit at the expiration of its Lease Agreement, such refund shall be  
14 paid, together with interest at the Legal Rate, in twelve (12) monthly installments commencing on  
15 the first day of the first month following the date such refund is otherwise due pursuant to the terms  
16 of the Lease Agreement. Allowed Lease Deposit Claims may be paid in full at any time without  
17 penalty. The foregoing is in full and final satisfaction of all Class 5 Claims.

18 The holders of Class 5 Claims are impaired. All Claims are subject to verification and are  
19 likely to be reduced following resolution of Disputed Claims, including mitigation and offset as  
20 applicable.

#### 21 **5.3 Class 6 (Allowed General Unsecured Claims).**

22 Class 6 consists of Allowed General Unsecured Claims.

23 Except to the extent that the holder of a particular Allowed Class 6 Claim has agreed to a less  
24 favorable treatment of such Claim, each holder of an Allowed Class 6 Claim will be paid in full, plus  
25 interest at the Legal Rate in twelve equal monthly installments commencing on the first day of the  
26 first month following the Effective Date.

27 Class 6 is impaired. All Claims are subject to verification and are likely to be reduced  
28 following resolution of Disputed Claims, including mitigation and offset as applicable.

1           **5.4     Class 7 (General Unsecured Claims of John and Rosalie Feece).**

2           Class 7 consists of the Allowed General Unsecured Claims of John and Rosalie Feece.

3           The principal amount of the Allowed General Unsecured Claims of John and Rosalie Feece  
4 will be paid over ten (10) years from the Effective Date together with interest at the Prime Rate,  
5 adjusted annually and subject to a three and one quarter percent (3 1/4%) floor, as follows: (i) for the  
6 first five (5) years following the Effective Date, John and Rosalie Feece will receive monthly  
7 payments of interest only, commencing on the first day of the first calendar month following the  
8 Effective Date, and (ii) for years 6 through 10 following the Effective Date, John and Rosalie Feece  
9 will receive monthly payments of principal and interest, based on a thirty (30) year amortization  
10 schedule. John and Rosalie Feece's Allowed General Unsecured Claims may be paid in full at any  
11 time without penalty but not before the Allowed General Unsecured Claims in Class 6 have been  
12 paid in full, and will be paid in all events no later than ten (10) years following the Effective Date.

13           If the Debtors experience a cash shortfall in any given month that prevents them from  
14 making all payments pursuant to the Plan, the payment due to the Class 7 Creditors shall be reduced  
15 by the amount of the shortfall and deferred, and paid only at such time as the Debtors have sufficient  
16 cash to make up the shortfall deferral.

17           The foregoing is in full and final satisfaction of all Class 7 Claims.

18           Class 7 is impaired. All Claims are subject to verification and are likely to be reduced  
19 following resolution of Disputed Claims, including mitigation and offset as applicable.

20                           **ARTICLE VI.**

21                           **MEANS FOR IMPLEMENTATION OF THE PLAN**

22           **6.1     Business Operation.**

23           The Reorganized Debtors will continue to operate the Subject Property and will use cash on  
24 hand and cash generated from business operations to perform their obligations under the Plan.

25           **6.2     Payments On the Effective Date.**

26           If the Reorganized Debtors do not have sufficient funds on the Effective Date to make the  
27 payments provided in the Plan to the holders of Allowed Administrative Claims, Tax Claims and  
28 Class 3 Priority Claims, any Member of any Debtor or any affiliate of any Debtor may, in their

1 discretion, loan sufficient funds to the Reorganized Debtors to make such payments, and such loans  
2 shall be treated as Class 6 Claims.

3 **6.3 Prosecution of Retained Claims.**

4 Except as otherwise provided in the Plan, subject to Section 6.5 herein, the Responsible  
5 Person will collect and prosecute the Retained Claims.

6 **6.4 Distributions.**

7 **6.4.1 Distribution Account.**

8 If the Disbursing Agent is a Person other than the Responsible Person, the Disbursing Agent  
9 shall hold any funds transmitted to it in a segregated trust account for the benefit of holders of  
10 Allowed Claims.

11 **6.4.2 Distribution Addresses.**

12 Unless a Creditor has provided the Debtors or the Reorganized Debtors and their counsel  
13 with written notice of a different address, Distributions will be mailed to Creditors at the address set  
14 forth in the proofs of Claim filed with the Bankruptcy Court. If no proof of Claim is filed with  
15 respect to a particular Claim, the Distribution will be mailed to the address set forth in the Schedules  
16 filed by the Debtors.

17 **6.4.3 Withholding Taxes.**

18 Pursuant to Section 346(h) of the Bankruptcy Code, the Disbursing Agent will be entitled to  
19 deduct any federal, state or local withholding taxes from any cash payments made with respect to  
20 Allowed Claims, as appropriate. The Disbursing Agent will be permitted to withhold a Distribution  
21 to any Creditor who has not provided information requested by the Disbursing Agent for the purpose  
22 of fulfilling its obligations hereunder. The Disbursing Agent shall comply with all reporting  
23 obligations imposed on it by any governmental unit with respect to withholding and related taxes.

24 **6.4.4 Loans.**

25 If the Reorganized Debtors do not have sufficient funds to make any payments provided in  
26 the Plan, any Member of any Debtor or any affiliate of any Debtor may, in their discretion, loan  
27 sufficient funds to the Reorganized Debtors to make such payments, and such loans shall be treated  
28 as Class 6 Claims.

1           **6.5     Responsible Person.**

2           On and after the Effective Date, John L. Feece shall serve as the Reorganized Debtors' Chief  
3 Executive Officer. To the extent provided by the Plan, he will also serve as the Responsible Person  
4 and Disbursing Agent.

5           The Responsible Person will be replaced in the event of a voluntary resignation, death,  
6 incapacity or at the request of a party in interest for "cause" upon order of the Bankruptcy Court. In  
7 the event of a voluntary resignation, the then-Responsible Person will select a replacement. In all  
8 other events, the Court will appoint a replacement. A voluntary resignation will not be effective  
9 until a successor has accepted in writing his or her appointment.

10          The Responsible Person will manage the Reorganized Debtors and will have all of the  
11 authority to act on behalf of the Reorganized Debtors in accordance with the Bankruptcy Code, the  
12 Bankruptcy Rules and Local Rules. Such management will include: (a) fulfilling the duties and  
13 obligations of the Debtors and the Reorganized Debtors under the Plan; and (b) fully administering  
14 the Bankruptcy Estates as required by the Plan, the Order of Confirmation, the Bankruptcy Code and  
15 the Bankruptcy Rules, which duties and obligations include the facilitation of Distributions pursuant  
16 to the Plan, reviewing Claims, objecting to Disputed Claims, supervising the preparation and filing  
17 of required tax returns of the Debtors and closing the Bankruptcy Cases. The Reorganized Debtors  
18 will be substituted as successors to the Debtors and their Estates in all actions and proceedings  
19 pending or thereafter commenced in the Bankruptcy Court with respect to Disputed Claims.  
20 Without limiting the foregoing, the Responsible Person, acting on behalf of the Reorganized  
21 Debtors, will have all of the rights and powers of an estate representative appointed pursuant to  
22 Section 1123(b)(3) of the Bankruptcy Code to prosecute or otherwise assert the Retained Claims,  
23 including Avoidance Actions, if any.

24          The Responsible Person may, in his discretion, employ such other Entities as may be  
25 necessary to assist with implementing the Plan and as otherwise necessary in the Cases.

26          Subject to the Reorganized Debtors' business judgment regarding the pursuit of any  
27 particular Retained Claim (which may entail evaluation, among other things, of the cost of pursuing  
28 such Retained Claim) and the concurrence of the Reorganized Debtors' Members, the Responsible

Person will have no obligation to pursue any affirmative claims on behalf of the Reorganized Debtors or its Estates and any such claims may be abandoned or waived.

Upon the Effective Date, the Responsible Person will be authorized on behalf of the Debtors and Reorganized Debtors to execute all instruments, agreements and documents, and to take all actions for and on behalf of the Debtors or Reorganized Debtors necessary to effectuate the provisions of the Plan. Any such document, agreement or instrument executed and delivered by the Responsible Person will be conclusively deemed duly executed by the Debtors and/or Reorganized Debtors without the need for further corporate action or order of the Bankruptcy Court. After the Effective Date, the Responsible Person will be entitled to implement and administer the Plan without the need for further corporate action or order of the Bankruptcy Court.

#### **6.6 Disbursing Agent.**

John L. Feece shall serve as Disbursing Agent unless otherwise ordered by the Court.

#### **6.7 De Minimis Distributions.**

Notwithstanding any other provision of the Plan, Distributions of less than \$50.00 need not be made on account of any Allowed Claim; provided, however, that Distributions that would otherwise be made but for this provision will carry over to the next Distribution Date until the cumulative amount to which any holder of an Allowed Claim is entitled is more than \$50.00, at which time the cumulative amount of such Distributions will be paid to such holder.

#### **6.8 Unclaimed Distributions.**

Any cash Distributions that remain unclaimed or unnegotiated for ninety (90) days following issuance of the check representing the Distribution or are returned for reasons other than the absence of a current or correct address (unless a current or correct address cannot be determined after reasonable inquiry) will become the property of the Reorganized Debtors.

#### **6.9 Tax Returns, Payments and Refunds.**

The Reorganized Debtors shall file or cause to be filed any and all delinquent and final tax returns and pay any and all taxes owed by the Debtors and the Reorganized Debtors on a timely basis (other than taxes provided for under the Plan). The Reorganized Debtors reserve all rights to amend prior tax returns of the Debtors and to pursue and collect all potential tax refunds, to claim

1 losses and to take such other actions to the fullest extent allowed by law.

2 **6.10 Further Orders.**

3 Upon motion by the Reorganized Debtors, the Bankruptcy Court may enter such other and  
4 further orders as may be necessary or appropriate to facilitate consummation of the Plan.

5 **6.11 Post-Confirmation Employment of Personnel.**

6 The Reorganized Debtors and any Disbursing Agent may employ or contract with Persons  
7 and other Entities to perform, or advise and assist them in the performance of, their respective  
8 obligations under the Plan. The Reorganized Debtors may continue to employ the Debtors'  
9 Professionals for the purposes for which they were employed before the Confirmation Date, and for  
10 such additional purposes as the Reorganized Debtors may request, and the Reorganized Debtors may  
11 employ such other Professionals as may be necessary to perform their responsibilities under the  
12 Plan.

13 **6.12 Post-Confirmation Compensation and Reimbursement of Debtors'**  
14 **Professionals.**

15 All Debtors' Professionals employed by the Reorganized Debtors after the Confirmation  
16 Date will be entitled to payment of their reasonable post-Confirmation Date fees and reimbursement  
17 of expenses on a monthly basis, subject to the following:

18 Each Debtors' Professional requesting payment of such compensation shall serve a detailed  
19 statement of requested fees and expenses on the Notice Parties.

20 Any Notice Party or other party in interest may object to any portion of the requested fees  
21 and expenses. Any objection to the payment of fees or reimbursement of expenses must be in  
22 writing (and sufficiently detailed to allow the Debtors' Professional whose fees or expenses are  
23 subject to the objection an opportunity to respond, and ultimately to allow the Bankruptcy Court to  
24 rule on such objection) and served on the Notice Parties and the Debtors' Professional whose fees  
25 and expenses are subject to the objection. Such an objection must be served within fifteen (15) days  
26 after service of the detailed statement.

27 If there is no objection to a Debtors' Professional's requested fees and expenses within such  
28 fifteen (15) day period, the Reorganized Debtors shall promptly pay the requested amount in full. If



1 an objection to a portion of the fees or expenses requested is timely served, the Reorganized Debtors  
2 shall promptly pay the undisputed portion of such fees and expenses.

3 To the extent that an objection is timely served, the Responsible Person shall reserve monies  
4 in the Disputed Claims Reserve Account in the amount of the disputed fees and expenses pending  
5 resolution of said objection.

6 Any objection to a request for payment of fees and expenses will be resolved by either: (a)  
7 written agreement between the Debtors' Professional requesting such fees and expenses and the  
8 objecting party; or (b) Final Order of the Bankruptcy Court. Resolution by the Bankruptcy Court  
9 must be requested by motion filed and served on the objecting party and the Notice Parties in  
10 accordance with the Bankruptcy Rules and the Local Rules on not less than twenty-one (21) days  
11 notice and such motion may be filed by either the requesting Debtors' Professional or the objecting  
12 party. Any opposition to the motion must be filed and served no later than seven (7) days prior to  
13 the hearing.

14 Debtors' Professionals will not otherwise be required to file applications for Bankruptcy  
15 Court approval of post-Confirmation fees and expenses.

16 **6.13 Post-Confirmation Notice.**

17 Whenever the Plan requires a Person to provide notice of some action, such Person seeking  
18 relief shall be required to serve a written notice on the Notice Parties. Such Person shall be  
19 authorized to take the action proposed to be taken in such notice upon the expiration of fifteen (15)  
20 days from service of the notice unless, before the expiration of the fifteen (15) day period, a party in  
21 interest has filed an objection to such proposed action with the Bankruptcy Court and scheduled a  
22 hearing on such objection within thirty (30) days of the filing of such objection. If any such  
23 objection is filed, the Person seeking the particular relief shall not take the proposed action unless  
24 the Bankruptcy Court approves such action or the objecting party withdraws the objection. Service  
25 by electronic filing pursuant to Local Rule 9013-3 shall be adequate for all notices and other  
26 pleadings filed with the Bankruptcy Court.

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1           **6.14 Revesting of Property of the Estates.**

2           On the Effective Date all property of the Debtors and the Bankruptcy Estates will vest in the  
3 Reorganized Debtors, free and clear of any and all liens, encumbrances, Claims and Interests of  
4 Creditors and Interest Holders except as provided in the Plan. Revesting does not modify the nature  
5 of any contracts assumed by the Debtors and/or Reorganized Debtors.

6           **6.15 Exemption From Certain Transfer Taxes.**

7           Following Confirmation, any sales or transfers will be, to the fullest extent permitted by law,  
8 entitled to the exemptions provided for under, and to the fullest extent permitted by, Section 1146(a)  
9 of the Bankruptcy Code. The Debtors reserve all rights to request a determination of legal questions  
10 related to the tax effects of the Plan as appropriate under Section 1146(b) of the Bankruptcy Code.

11           **6.16 Post-Confirmation Reports, Fees, and Final Decree.**

12                 6.16.1 U.S. Trustee Fees.

13           Not later than thirty (30) days after the end of each calendar quarter that ends after the  
14 Effective Date (including any fraction thereof), the Reorganized Debtors shall pay to the United  
15 States Trustee the quarterly fee for such quarter until the Cases are converted, dismissed, or closed  
16 pursuant to a Final Decree, as required by 28 U.S.C. § 1930(a)(6).

17                 6.16.2 Post-Confirmation Reports.

18           Not later than thirty (30) days after the end of each calendar quarter which ends after the  
19 Effective Date, the Reorganized Debtors shall file and serve upon the United States Trustee a  
20 quarterly post-Confirmation status report in substantially the form provided by the United States  
21 Trustee. Further reports must be filed no later than thirty (30) days after the end of every calendar  
22 quarter thereafter until the entry of a Final Decree, unless otherwise ordered by the Bankruptcy  
23 Court.

24                 6.16.3 Final Decree.

25           At such time as all motions, contested matters and adversary proceedings have been finally  
26 resolved and the Bankruptcy Cases are in a condition to be closed, the Reorganized Debtors shall file  
27 an application for the entry of a Final Decree to close the Bankruptcy Cases pursuant to Section 350  
28 of the Bankruptcy Code and Rule 3022 of the Bankruptcy Rules. Entry of a Final Decree may be

sought by the Reorganized Debtors notwithstanding that all payments required by the Plan have not been completed provided the Bankruptcy Cases are determined by the Bankruptcy Court to be fully administered; provided further, that the Bankruptcy Court retains jurisdiction to hear all matters involving the further administration of the Plan until all holders of Allowed Claims have been paid in full or as otherwise agreed to or provided for under the Plan. The Reorganized Debtors shall serve the application for entry of a Final Decree on the Notice Parties. Pursuant to Local Rule, such application shall be considered by the Bankruptcy Court without a hearing unless within fourteen (14) days after the date of service of the notice, a party in interest files and serves a request for hearing.

## **ARTICLE VII.**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **7.1 Treatment of Executory Contracts and Unexpired Leases.**

The Debtors reserve the right to move the Bankruptcy Court at any time for authority to assume, assume and assign, or reject, pursuant to Bankruptcy Code Section 365, any and all contracts that are executory and leases that are unexpired.

#### **7.2 Assumption of Executory Contracts and Unexpired Leases.**

Each contract and lease listed on **Exhibit "B"** to the Plan will be assumed by the Debtors on the Effective Date to the extent each such contract is executory and each such lease is unexpired.

#### **7.3 Effect of Assumption of Executory Contracts and Unexpired Leases.**

All executory contracts and unexpired leases assumed prior to Confirmation or pursuant to the Plan and not otherwise rejected pursuant to the Plan or otherwise will remain in full force and effect, be unimpaired by the Plan except as specifically modified by the Plan and the Order of Confirmation, and be binding on the parties thereto.

#### **7.4 Adding and Removing Executory Contracts and Unexpired Leases.**

The provisions of this Article VII may be amended, with appropriate notice to those parties in interest directly affected, at any time prior to the conclusion of the hearing on Confirmation of the Plan, to add or remove executory contracts and unexpired leases to be assumed, assumed and assigned, or rejected pursuant to the Plan.

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professionals will have no obligation to recognize any transfer of Claims after the Effective Date.

ANY PARTY WHO ACQUIRES A CLAIM AGAINST THE DEBTORS OR REORGANIZED DEBTORS AFTER THE EFFECTIVE DATE MUST ARRANGE WITH THE HOLDER OF SUCH CLAIM TO RECEIVE DISTRIBUTIONS TO WHICH THE TRANSFEREE MAY BE ENTITLED. NEITHER THE REORGANIZED DEBTORS NOR THE DISBURSING AGENT WILL BE REQUIRED TO TRACK CHANGES IN OWNERSHIP OF CLAIMS AFTER THE EFFECTIVE DATE.

### **8.3 Amendments to Claims.**

Except as provided by the Plan or as otherwise permitted by the Bankruptcy Court, the Bankruptcy Rules or applicable law, proofs of Claim: (a) may not be filed upon expiration of the applicable bar date; and (b) may not be amended after the expiration of the applicable bar date except for amendments to proofs of Claim to decrease the amount or priority thereof.

### **8.4 Claim Objections.**

An objection to a Claim must be filed no later than the Claims Objection Date. The Reorganized Debtors shall have the primary responsibility to review Claims filed against the Debtors, to file objections as appropriate and to resolve Disputed Claims.

### **8.5 Disallowance of Claims.**

All claims of any Entity from whom property is sought by the Debtors, the Reorganized Debtors or the Responsible Person, under Sections 542, 543, 550 or 553, of the Bankruptcy Code, or with respect to whom the Debtors, the Reorganized Debtors or Responsible Person alleges is a transferee of a transfer that is avoidable under Section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code, will be disallowed if: (a) such Entity on one hand, and the Debtors, the Reorganized Debtors or the Responsible Person, on the other hand, agree, or the Bankruptcy Court has determined by a Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code, and (b) such Entity or transferee has failed to turnover such property by the dates set forth in such agreement or Final Order.

EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE CLAIMS BAR DATE WILL BE DEEMED DISALLOWED AND

1 EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE OR  
2 ACTION, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH  
3 CLAIMS WILL NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS,  
4 UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER  
5 OF THE BANKRUPTCY COURT ON OR BEFORE THE LATER OF (A) THE  
6 CONFIRMATION HEARING, OR (B) 45 DAYS AFTER THE APPLICABLE BAR DATE.

7 **8.6 Reserve Accounts.**

8 **8.6.1 Disputed Claims Reserve Account.**

9 Subject to the next sentence, any cash that would be distributed to the holder of a Disputed  
10 Claim if it were an Allowed Claim on any Distribution Date hereunder will be deposited by the  
11 Disbursing Agent into the Disputed Claims Reserve Account. Not later than fifteen (15) days after  
12 the Disbursing Agent receives notice that a Disputed Claim has been Allowed in whole or in part,  
13 the Disbursing Agent shall Distribute the cash deposited into the Disputed Claims Reserve Account  
14 on account of such Disputed Claim. To the extent that cash payments made into the Disputed  
15 Claims Reserve Account on account of a Disputed Claim ultimately exceed the cash distributable  
16 with respect to the Allowed Amount of such Claim, such excess cash will become the property of the  
17 Reorganized Debtors.

18 **8.7 Distributions.**

19 Notwithstanding any provision of the Plan specifying a date or time for payments or  
20 Distributions of consideration hereunder, payments and Distributions in respect of any Claim that at  
21 such date or time is disputed, unliquidated, contingent, or unknown as to amount will not be made  
22 until a Final Order with respect to an objection, estimation or valuation of such Claim is entered by  
23 the Bankruptcy Court, whereupon appropriate Distributions will be made promptly in accordance  
24 with the preceding section.

25 **ARTICLE IX.**

26 **DEFAULT**

27 If the Reorganized Debtors default in the performance of any of their obligations under the  
28 Plan, and have not cured such default within a period of twenty-one (21) days after receipt of written

1 notice of default from any party in interest affected by the alleged default, then such party in interest  
2 may file a motion with the Bankruptcy Court seeking an order directing the Reorganized Debtors to  
3 perform such obligations. If the Reorganized Debtors default in the performance of any material  
4 obligation under the Plan, any party in interest, including the Office of the United States Trustee,  
5 may file a motion with the Bankruptcy Court seeking an order converting the Bankruptcy Cases to  
6 cases under Chapter 7 of the Bankruptcy Code. If such motion is granted, the Plan will terminate,  
7 and all then remaining property of the Reorganized Debtors will vest in the Chapter 7 estates. Such  
8 property will be administered by the Chapter 7 trustee as prescribed in Chapter 7 of the Bankruptcy  
9 Code. Any party in interest, including the Reorganized Debtors, may oppose any such motion.

## 10 **ARTICLE X.**

### 11 **PRESERVATION OF RETAINED CLAIMS AND AVOIDANCE ACTIONS**

12 The Debtors continue to review transactions and records which process may result in  
13 additional claims against persons not yet identified herein, and may also result in other claims  
14 against persons identified herein in addition to those identified at this point in time. Nothing in the  
15 Plan will be deemed to constitute a waiver of the powers of the Debtors as debtors in possession  
16 under the Bankruptcy Code or the Bankruptcy Rules, and the Debtors and the Reorganized Debtors,  
17 as applicable, will retain after Confirmation and after the Effective Date, all powers granted by the  
18 Bankruptcy Code and the Bankruptcy Rules to a trustee and debtor in possession, including without  
19 limitation, those relating to the recovery of property, avoidance of liens, and objections to, and/or  
20 subordination of, Claims, including the CIBC Action. Confirmation of the Plan effects no  
21 settlement, compromise, waiver or release of any Retained Claim unless the Plan or Order of  
22 Confirmation specifically and unambiguously so provides. The failure of the Plan to refer to any  
23 particular Retained Claim is not and will not be construed as a settlement, compromise, waiver, or  
24 release of any such Retained Claim. All Retained Claims are hereby preserved and will continue to  
25 remain valid after the Effective Date. Except as provided in the Plan or the Order of Confirmation,  
26 the Debtors and the Reorganized Debtors reserve any and all Claims, Retained Claims, causes of  
27 action and rights against any and all third parties, whether such Claims, Retained Claims, causes of  
28 action or rights arose before, on or after the Petition Date, the Confirmation Date, the Effective Date

1 and/or the date Distributions are made. The entry of the Confirmation Order will not constitute *res*  
2 *judicata* or otherwise bar, estop or inhibit any actions by the Debtors or the Reorganized Debtors, as  
3 applicable, regarding any claims they hold as identified herein or otherwise.

4 Without limiting the generality of the foregoing, the Retained Claims include, but are not  
5 limited to, Avoidance Actions, the CIBC Action and all claims identified in the Debtors' Schedules  
6 and Statements Of Financial Affairs (as amended or supplemented), if any. Any recovery arising  
7 out of or related to an Avoidance Action will be property of the Debtors or Reorganized Debtors as  
8 applicable, and will be used to pay Distributions pursuant the Plan.

## 9 **ARTICLE XI.**

### 10 **RETENTION OF JURISDICTION**

11 The Bankruptcy Court will have and retain on and after the Confirmation Date and on and  
12 after the Effective Date exclusive jurisdiction of the Bankruptcy Cases: (a) to enforce the provisions,  
13 purposes, and intent of the Plan; (b) to determine the allowance or disallowance of Claims; (c) to  
14 hear and determine proceedings initiated before or after the Confirmation Date and the Effective  
15 Date regarding the prosecution of the Retained Claims or any other rights, claims, causes of action or  
16 claims for relief held by the Reorganized Debtors against any party, including the recovery of  
17 property and subordination of Claims; (d) to fix and approve allowance of compensation and other  
18 Administrative Claims, including, if appropriate, payments to be made in connection with the Plan;  
19 (e) to adjudicate controversies arising from the terms of the Plan; (f) to hear and determine any  
20 proposed modifications of or amendments to the Plan to the extent permitted by Section 1127 of the  
21 Bankruptcy Code and Bankruptcy Rule 3019; (g) to enforce or interpret the provisions of the Plan,  
22 the Order of Confirmation or any order entered by the Bankruptcy Court in the Bankruptcy Cases;  
23 (h) to facilitate the consummation of the Plan; (i) to consider such other matters as may be set forth  
24 in the Plan or the Order of Confirmation; (j) to hear and determine any Claim of any Person of any  
25 nature whatsoever against the Debtors' Professionals arising in, under or related to the Cases; (k) to  
26 hear any other matters pertaining to the Plan; and (l) to enter a Final Decree closing the Bankruptcy  
27 Cases. If closed, the Bankruptcy Cases may be reopened at any time to facilitate the provisions of  
28 this Article XI of the Plan.



1 **ARTICLE XII.**

2 **EFFECT OF ORDER OF CONFIRMATION**

3 As of the Confirmation Date, the effect of the Order of Confirmation will be as provided in  
4 Section 1141 of the Bankruptcy Code, and as follows:

5 **12.1 Binding Effect of Plan.**

6 The provisions of the confirmed Plan will bind the Debtors, the Reorganized Debtors, any  
7 entity acquiring property under or otherwise accepting the benefits of the Plan, and every Creditor  
8 and Interest Holder, whether or not such Creditor or Interest Holder has filed a proof of Claim or  
9 Interest in the Bankruptcy Cases, whether or not the Claim or Interest of such Creditor or Interest  
10 Holder is impaired under the Plan, and whether or not such Creditor or Interest Holder has accepted  
11 or rejected the Plan.

12 **12.2 Discharge.**

13 Except as otherwise provided in the Plan or the Order of Confirmation, the rights afforded  
14 under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in  
15 complete satisfaction, discharge, and release of, all Claims, including any interest accrued thereon  
16 from and after the Petition Date, against the Debtors, the Reorganized Debtors, the Bankruptcy  
17 Estates, or any assets or property of the Debtors, the Reorganized Debtors and the Bankruptcy  
18 Estates. Except as provided in the Plan or the Order of Confirmation, pursuant to Bankruptcy Code  
19 § 1141(d), Confirmation forever discharges the Debtors and the Reorganized Debtors from any and  
20 all Claims and all debts that arose before the Effective Date, and all debts of the kind specified in  
21 Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (a) a proof of Claim based  
22 on such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (b) a Claim based  
23 on such debt is Allowed under Section 502 of the Bankruptcy Code; or (c) the holder of a Claim  
24 based on such debt has accepted the Plan.

25 **12.3 Full Satisfaction of Claims and Interests.**

26 Except as otherwise provided in the Plan and the Order of Confirmation, the rights afforded  
27 in the Plan will constitute full and complete satisfaction and release of all Claims and Interests,  
28 including any interest accrued thereon from and after the Petition Date, against the Debtors, the



1 Reorganized Debtors, the Bankruptcy Estates, or any assets or property of the Debtors, the  
2 Reorganized Debtors and the Bankruptcy Estates.

3 **12.4 Injunction.**

4 As of the Confirmation Date, all Persons or Entities that have held, currently hold or may  
5 hold a Claim or other debt or liability that is discharged or any other right that is terminated under  
6 the Bankruptcy Code or the Plan are permanently enjoined from commencing or continuing any  
7 action, the employment of process, or other action, to collect, recover or offset any such Claim or  
8 debt as a liability of the Debtors or the Reorganized Debtors to the fullest extent permitted by  
9 Bankruptcy Code Section 524.

10 **12.5 Judgments Null and Void.**

11 Any judgment obtained before or after the Confirmation Date in any court other than the  
12 Bankruptcy Court will be null and void as a determination of the liability of the Debtors or the  
13 Reorganized Debtors.

14 **12.6 Preservation of Insurance.**

15 Nothing in the Plan will diminish or impair the enforceability of any insurance policy that  
16 may cover Claims against the Debtors or any other Person.

17 **ARTICLE XIII.**

18 **CONDITIONS PRECEDENT**

19 **13.1 Conditions Precedent.**

20 Each of the following is a condition to the Effective Date:

21 The Confirmation Order is entered and becomes a final order in form  
22 and substance satisfactory to the Debtors. The Confirmation Order  
23 will provide, among other things, that the Debtors or Reorganized  
24 Debtors, as appropriate, are authorized and directed to take all actions  
25 necessary or appropriate to consummate the Plan, including, without  
limitation, entering into, implementing and consummating the  
contracts, instruments, releases, leases, indentures, and other  
agreements or documents created in connection with or described in  
the Plan.

26 **13.2 Waiver of Conditions.**

27 The conditions set forth above may be waived by the Debtors without notice, leave or order  
28 of the Bankruptcy Court, or any formal action other than proceeding to confirm or consummate the

1 Plan.

2 **ARTICLE XIV.**

3 **MISCELLANEOUS**

4 **14.1 No Admissions.**

5 Except as specifically provided in the Plan, nothing contained in the Plan may be deemed or  
6 construed in any way as an admission by the Debtors or its Bankruptcy Estates with respect to any  
7 fact or any matter set forth in the Plan, including the amount or allowability of any Claim, or the  
8 value of any property of the Bankruptcy Estates.

9 Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the  
10 Effective Date does not occur, the Plan will be null and void, and nothing contained in the Plan will:  
11 (a) be deemed to be an admission by the Debtors with respect to any matter discussed in the Plan,  
12 including liability on any Claim or the propriety of any Claim's classification; (b) constitute a  
13 waiver, acknowledgement, or release of any Claim, Interest, or any claims held by the Debtors; or  
14 (c) prejudice in any manner the rights of the Debtors or the Bankruptcy Estates in any further  
15 proceedings.

16 **14.2 Revocation of the Plan.**

17 The Debtors reserve the right to withdraw the Plan before the Confirmation Date.

18 **14.3 Successors and Assigns.**

19 The rights, benefits, and obligations of any Entity referred to in the Plan will be binding on,  
20 and will inure to the benefit of any heir, executor, administrator, successor, or assign of that Entity.

21 **14.4 Nonconsensual Confirmation.**

22 In the event that Classes entitled to vote fail to accept the Plan in accordance with  
23 Bankruptcy Code Section 1129(a)(8), the Debtors reserve the right to modify the Plan in accordance  
24 with Bankruptcy Code Section 1127(a). In accordance with Section 1127 of the Bankruptcy Code,  
25 the Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan or any Plan  
26 exhibit or schedule including amending or modifying it to satisfy the requirements of the Bankruptcy  
27 Code.

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1           **14.5   Destruction of Records.**

2           The Reorganized Debtors may, but are not required to, seek one or more orders of the  
3 Bankruptcy Court authorizing the abandonment and destruction of their books and records at such  
4 time as the recordkeeping time periods required by applicable law, custom or practice have expired.

5           **14.6   Saturday, Sunday and Legal Holiday.**

6           If any payment or act under the Plan should be made or performed on a day that is not a  
7 Business Day, then the payment or act may be completed the next succeeding day that is a Business  
8 Day, in which event the payment or act will be deemed to have been completed on the required day.

9           **14.7   Plan Interpretation.**

10          The headings contained in the Plan are for convenience of reference only and do not limit or  
11 otherwise affect in any way the meaning or interpretation of the Plan. All references in the Plan to  
12 the singular will be construed to include references to the plural and vice versa. All references in  
13 the Plan to any one of the masculine, feminine or neuter genders will be deemed to include  
14 references to both other such genders. References to the Debtors will also include the Reorganized  
15 Debtors (or vice versa) as the context requires. All references in the Plan to a Section or an Article  
16 mean the appropriately numbered Section or Article of the Plan. Whenever the Plan uses the term  
17 “including,” such reference is deemed to mean “including, but not limited to.”

18          **14.8   Modification.**

19          The Debtors may propose amendments to or modifications of the Plan under Section 1127(a)  
20 of the Bankruptcy Code and Bankruptcy Rule 3019 at any time prior to the conclusion of the hearing  
21 on Confirmation of the Plan. After the Confirmation Date, the Debtors may modify the Plan in  
22 accordance with Section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019.

23          **14.9   Setoff/Recoupment.**

24          Nothing contained in this Plan constitutes a waiver or release by the Debtors or Reorganized  
25 Debtors of any right of setoff or recoupment the Debtors may have against any Creditor.

26          **14.10 Waiver.**

27          After the Confirmation Date, except as otherwise specifically set forth in the Plan, any term  
28 of the Plan may be waived only by the party or parties entitled to the benefit of the term to be

1 waived.

2 **14.11 Notices.**

3 All notices required or permitted to be made in accordance with the Plan must be in writing  
4 and delivered personally or by first class mail, as follows:

5 If to the Reorganized Debtors

6 Community Towers I-IV, LLC  
7 Attn: John L. Feece  
8 111 W. Saint John Street, Suite 705  
9 San Jose, C 95113

10 With a copy to:

11 John Walshe Murray  
12 Murray & Murray  
13 A Professional Corporation  
14 19400 Stevens Creek Boulevard, Suite 200  
15 Cupertino, California 95014

16 and if to a holder of an Allowed Claim or Allowed Interest, at the address prescribed by  
17 Section 6.4.2. Notices will be deemed given when delivered or three days after deposit in the United  
18 States mail. Any Entity may change the address at which such entity is to receive notices under the  
19 Plan by filing a written notice with the Bankruptcy Court and serving such notice on the  
20 Reorganized Debtors and their counsel.

21 **14.12 Reservation of Rights.**

22 Neither the filing of the Plan nor any statement or provision contained in the Plan or in the  
23 Disclosure Statement, nor the taking by any party in interest of any action with respect to the Plan,  
24 will: (a) be or be deemed to be an admission against interest; and (b) until the Effective Date, be or  
25 be deemed to be a waiver of any rights any party in interest may have: (i) against any other party in  
26 interest; or (ii) in any of the assets of any other party in interest, and, until the Effective Date, all  
27 such rights are specifically reserved. In the event that the Plan is not confirmed or fails to become  
28 effective, neither the Plan nor the Disclosure Statement nor any statement contained in the Plan or in  
the Disclosure Statement may be used or relied upon in any manner in any suit, action, proceeding or  
controversy within or without these Bankruptcy Cases involving the Debtors.

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JWM/RRL:cc:mw

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**14.13 Exhibits.**

All exhibits attached to the Plan are hereby incorporated into the Plan by this reference.

Dated: March 27, 2012  
COMMUNITY TOWERS I, LLC  
A DELAWARE LIMITED LIABILITY COMPANY

By: /s/ John L. Feece  
John L. Feece  
Responsible Individual

Dated: March 27, 2012  
COMMUNITY TOWERS II, LLC  
A DELAWARE LIMITED LIABILITY COMPANY

By: /s/ John L. Feece  
John L. Feece  
Responsible Individual

Dated: March 27, 2012  
COMMUNITY TOWERS III, LLC  
A DELAWARE LIMITED LIABILITY COMPANY

By: /s/ John L. Feece  
John L. Feece  
Responsible Individual

Dated: March 27, 2012  
COMMUNITY TOWERS IV, LLC  
A DELAWARE LIMITED LIABILITY COMPANY

By: /s/ John L. Feece  
John L. Feece  
Responsible Individual

MURRAY & MURRAY,  
A PROFESSIONAL CORPORATION

By: /s/ John Walshe Murray  
John Walshe Murray  
Attorneys for Debtors